

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 26, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Ref: GL 4008

OAHU

Authorize a Six-Month Holdover for General Lease No. 4008, Walter Fook Loy Chong Self Trusteed Trust and Evelyn Meu Lang Chong Trusteed Trust, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:014.

APPLICANT:

Walter Fook Loy Chong Self Trusteed Trust and Evelyn Meu Lang Chong Trusteed Trust

LEGAL REFERENCE:

Sections 171-40, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-027:014, as shown on the attached map labeled Exhibit A.

AREA:

20.395 acres, more or less.

ZONING:

State Land Use District: Agricultural  
City and County of Honolulu LUO: AG-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by General Lease No. 4008, Walter Fook Loy Chong Self Trusteed Trust and Evelyn Meu Lang Chong Trusteed Trust, for General Agriculture purposes.

ANNUAL RENTAL:

Current rent is \$9,930.00, due in quarterly installments of \$2,482.50 on the 11th day of March, June, September, and December of each year.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." See Exhibit B for exemption notification.

DCCA VERIFICATION:

Individual, not applicable

APPLICANT REQUIREMENTS:

None

BACKGROUND:

The subject lease was sold at an auction in 1966 for an original term of 20 years. In 1985, the lease was extended for another 25 years expiring in September 2011. Mr. & Mrs. Walter Chong ("Lessees") were the original lessees since 1966 until they assigned the lease to their trust in 1992. The lease expires on September 11, 2011.

On May 13, 2011, under agenda item D-9, the Board authorized an additional 10-year extension. An immediate rental reopening for the extended term to be conducted by an independent appraiser was required pursuant to the May 2011 approval. On July 13, 2011, the Department requested the Lessees remit the appraisal fee (\$2,400) by August 15, 2011 before the selected independent appraiser (Medusky & Co., Inc.) would start the work.

Recently, we received a letter from the Lessees alleging the independent appraiser selected for the subject reopening was biased against their interest during an arbitration proceeding in 2007. A copy of the letter is attached as Exhibit C. The Lessees request additional time in selecting another appraiser for the reopening appraisal.

In view of the imminent expiration date of the subject lease, staff requests the Board authorize a six-month holdover period which will allow the Department and the Lessees time to resolve the reopening issue.

RECOMMENDATION: That the Board

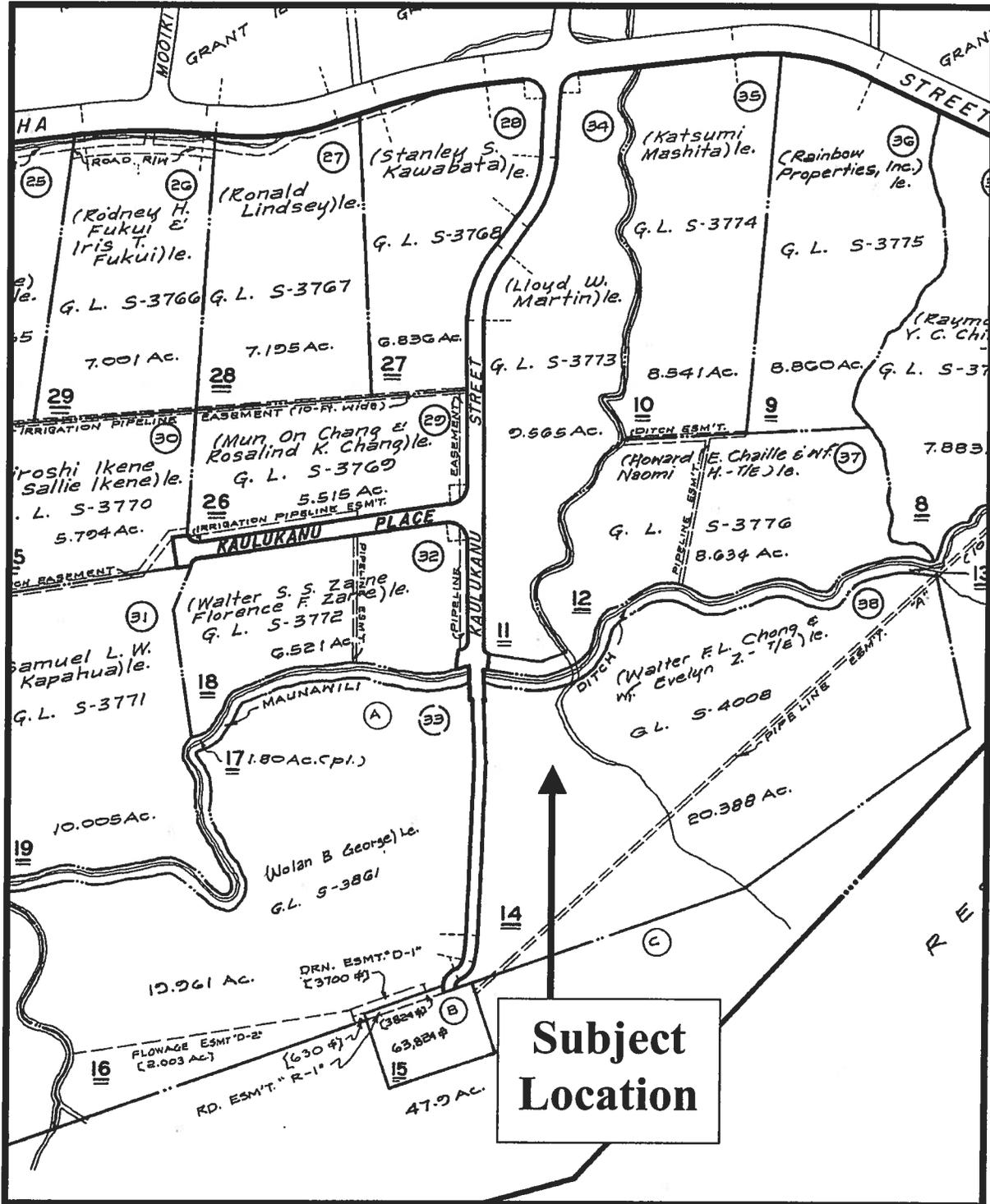
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize a six-month holdover for General Lease No. 4008, Walter Fook Loy Chong Self Trusteed Trust and Evelyn Meu Lang Chong Trusteed Trust, Lessees, subject to the following:
  - A. Comply with all terms and conditions of General Lease No. 4008 during the six-month holdover period.
  - B. Rent shall remain \$2,482.50 per quarter during the six-month holdover period.
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson



TMK (1) 4-1-027:014

**EXHIBIT A**



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 26, 2011

**EXEMPTION NOTIFICATION**

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request for Six-Month Holdover Period

Project / Reference No.: GL 4008

Project Location: Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:014

Project Description: Request for holdover period to resolve the reopening issue under a lease extension approval

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".

The subject property was used for agriculture activities since 1966. The request pertains to the continue use of the subject parcel for the same purposes. Staff believes that there would be negligible or no expansion or change of use beyond that previously existing.

Consulted Parties: None

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

\_\_\_\_\_  
William J. Aila, Jr.  
Chairperson

8/16/11  
\_\_\_\_\_  
Date

Anuenue Acres  
Walter and Evelyn Chong  
Waimanalo, Hawai'i 96795

August 8, 2011

RECEIVED  
LAND DIVISION

2011 AUG -9 A 10: 21

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Mr. Russell Y. Tsuji  
Land Division Administrator  
Department of Land and Natural Resources  
Land Division  
Post Office Box 621  
Honolulu, Hawai'i 96809  
Attn.: Ms. Charlene Unoki

Subject: REQUEST FOR CHANGE OF APPRAISER AND/OR  
EXTENSION ON APPRAISAL FEE  
Determination of annual fair market rent for purposes of a lease  
extension GL S-4008, Waimanalo, Koolaupoko, Oahu, Hawai'i.  
TMK: (1) 4-1-27: 14, consisting of 20.395 acres

Dear Mr. Tsuji:

This acknowledges your letter dated July 13, 2001, addressed to me and my wife  
in the above-referenced matter.

Please be advised my wife and I are very much interested in a **fair and proper determination** of the annual fair market rent for the lease extension of our agricultural property. We are ready, willing, and able to pay the \$2,400 for a qualified, licensed, and impartial appraiser in the State of Hawai'i to perform the appraisal *other* than Medusky & Co., Inc. (hereinafter referred to as "Medusky"). Medusky was selected by the Appraisal Section of the DLNR Land's Division solely because it submitted the lowest bid. The selection process completely ignored Medusky's past history as the appraiser for this same property and its principal's (Mr. Jan Medusky's) inherent bias having previously participated in an adversarial arbitration process in which we opposed his appraisal and challenged his appraisal approach/methodology.

Just 5 years ago, in an appraisal report addressed to you dated May 8, 2006, Medusky indicated the market rent for the property should be \$11,300 per year. Our ground rent at the time was \$3,500 per year, established just a few years prior through the arbitration process (chaired then by Sanford Goto, MAI) where Jan Medusky was **our** paid appraiser expert witness. Just 5 years later in 2006, *now with the shoe on the other foot* which was never disclosed to us

EXHIBIT "c"

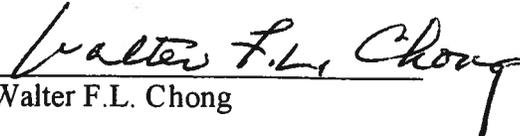
before the appraisal was done, Medusky rendered an appraisal of the same property that was more than 3 times what had been determined before by Mr. Goto's panel. The Medusky appraisal in 2006 was so inflated and based on an appraisal approach that did not follow the DLNR's own prescribed approach for agricultural lease rents, that it skewed the final determination by the 3 Panel of Arbitrators consisting of Jan Medusky (for DLNR), the late Mitsuo Shimizu (for my wife and me) and Paul Cool (selected by Messrs. Medusky and Shimizu).

Medusky's earlier appraisal and Jan Medusky's participation as one the 3 members comprising the panel in the earlier adversarial proceeding (arbitration) in January 2007 opposing our interests should preclude him from appraising our property today for purposes of this lease extension. Just by appearance alone, Medusky will be hard pressed to render a fair and impartial appraisal of the same property. For DLNR to select the same appraiser who opposed us 5 years ago to perform the appraisal of the same property today with their inherent bias is unjust and extremely unfair to us. To require us to now pay for the cost of Medusky's fee to conduct the appraisal today only adds insult to injury. Indeed, on a strictly *professional ethical* level, notwithstanding these are difficult economic times, we are surprised Medusky even submitted a bid to appraise our property given Jan Medusky's clear bias and the fact he served as a panel member for the Lessor on the 3 member arbitration who decided the current lease rent for the same property.

**As stated previously, we are very much interested in extending our lease as recently requested and approved by the Board. We kindly request an extension of time in which to explore with DLNR an alternative appraiser or appraisal method to determine the annual fair market rent for purposes of the lease extension of GL S-4008.** We regret any inconvenience or delay this extension of time may cause DLNR in re-doing the bids or possibly coming up with an alternative method in arriving at a fair market rent for this property. We trust you understand our need for an extension and appreciate the fact we remain willing to pay, in whole or in part, for the cost of an appraisal by an appraiser licensed in the State of Hawaii as a CGA *other* than Medusky. If another Hawaii licensed appraiser is to be selected, we prefer someone who has experience in appraising State agricultural leasehold property.

We look forward to hearing from you shortly.

Very truly yours,

  
Walter F.L. Chong